

Notice of Allowability

Application No.

09/770,703

Applicant(s)

DELZER, BRENT

Examiner

Medina A Ibrahim

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 08/18/03.
2. ☒ The allowed claim(s) is/are 1-5, 9-13, 15-22 and 50-51 renumbered as 1-20, respectively.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bruce Vrana on 10/13/03.

The application has been amended as follows:

In The Claims:

In claim 2, "a" has been deleted.

In claim 5, "parts" has been changed to ---part----.

Claim 9 (Currently amended). A (The) maize plant or [a] part thereof produced from the maize plant according to claim 2 or 5, by transformation with [further comprising] a transgene that confers upon said maize plant or part thereof tolerance to a herbicide.

In claim 10, "or" after sulfonylurea has been replaced with ---herbicide , ----.

Claim 11 (Currently amended). A (The) maize plant or [a] part thereof produced from the maize plant according to claim 2 or 5, by transformation with [further comprising] a transgene that confers upon said maize plant or part thereof insect resistance, disease resistance or virus resistance.

Claim 12 (Currently amended). The maize plant according to claim 11, wherein said transgene comprises [conferring upon said maize plant insect resistance is] a *Bacillus thuringiensis* Cry1Ab gene.

Claim 13 (Currently amended). The maize plant according to claim 12, wherein said transgene further comprises [comprising] a bar gene.

Claim 15 (Currently amended). Seed produced by selfing the plant according to claim 2 or 5, wherein said seed produce plants having all the physiological and morphological characteristics of inbred line NP 2174, seed of said inbred line having been deposited under ATCC Accession No:PTA-2970.

Claim 16 (Currently amended). A tissue culture of regenerable cells of the maize plant according to claim 2 or 5 [, wherein the tissue regenerate plants capable of expressing all the morphological and physiological characteristics of the plant according to claim 2].

Claim 17 (Currently amended). The tissue culture according to claim 16, wherein the regenerable cells are from a tissue [being] selected from the group consisting of embryo, meristem, pollen, leaf [leaves], anther, root, root tip, silk, flower, kernel, ear, cob, husk and stalk [, or are protoplasts or callus produced therefrom].

In claim 20, "first generation (F1)" has been deleted.

Claim 21 (Currently amended). The method according to claim 19, wherein the inbred maize plant [of claim 2] is the female parent.

Claim 22 (Currently amended). The method according to claim 19, wherein the inbred maize plant [of claim 2] is the male parent.

-----Claim 50 (New). A method of introducing a desired trait into maize inbred line NP2174 comprising:

a) crossing NP2174 plants grown from seed deposited under ATCC Accession No. PTA- 2970, with plants of another maize line that comprise a desired trait to produce F1 progeny plants, wherein the desired trait is selected from male sterility, herbicide resistance, insect resistance, and resistance to bacterial, fungal or viral disease;

(b) selecting F1 progeny plants that have the desired trait to produce selected F1 progeny plants;

(c) crossing the selected progeny plants with NP2174 plants to produce backcross progeny plants;

(d) selecting for backcross progeny plants that have the desired trait and physiological and morphological characteristics of maize inbred line NP2174 to produce selected backcross progeny plants ; and

(e) repeating steps (c) and (d) three or more times in succession to produce selected fourth or higher backcross progeny plants that comprise the desired trait and all of the physiological and morphological characteristics of maize inbred line NP2174 listed in Table 1 as determined at the 5% significance level when grown in the same environmental conditions.-----

-----Claim 51 (New). A plant produced by the method of claim 50, wherein the plant has the desired trait and all of the physiological and morphological characteristics

of corn inbred line NP2174 listed in Table 1 as determined at the 5% significance level when grown in the same environmental conditions.----

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: for clarification, "part thereof" in claims 2, 5, 9 and 11 is understood to mean the non-seed part of the plant.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Papers related to this application may be submitted to Technology Sector 1 by facsimile transmission. Papers should be faxed to Crystal Mall 1, Art Unit 1638, using fax number (703) 308-4242. All Technology Sector 1 fax machines are available to receive transmission 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Medina A. Ibrahim whose telephone number is (703) 306-5822. The Examiner can normally be reached Monday-Thursday from 8:30AM to 5:30PM and every other Friday from 9:00AM to 5:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Amy Nelson, can be reached at (703) 306-3218.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0196.

10/15/03
Mai



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